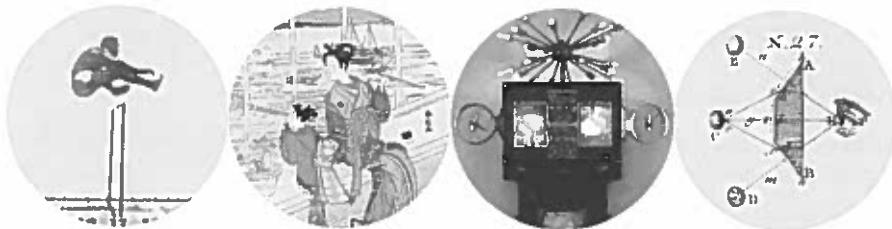


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Virtual Child Porn: The Law and the Semiotics of the Image¹

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Abstract

A Supreme Court decision on virtual child pornography dramatizes new issues for understanding pornography, images of children and image technology. Contested understandings of childhood change the cultural and legal fields as conservative forces push for expanded definitions of childhood and increasing restrictions on children, while capitalist marketing sexualizes consumption practices. Increasing protection of children expands the scope of pedophilic discourse, while attention to image material diverts concern for, and resources from, actual child abuse incidents.

Keywords

child • child abuse • criminal law • digital image • image research • pornography • sexual representations • Supreme Court • virtual image

In April 2002, the US Supreme Court delivered its judgment of a case involving 'virtual child pornography' (*Ashcroft v. Free Speech Coalition*).² My concern here is to discuss the underlying themes of this case and elaborate on some of its implications and closely related issues. I believe there is a considerable gap between the development of visual semiotic analysis and visual culture studies, on the one hand, and the juridical and political fields

of policy, law and enforcement, on the other. It is a somewhat familiar gesture to critique established agencies for not understanding visual culture. But examining these issues also reveals some of the signifying absences in contemporary media studies. That is, problems with 'our' theories are revealed when set against the pragmatics of the existing social world. In turn, the political world shapes the very possibility and nature of any research and knowledge in this area.

We live in a time of sharply contested understandings of childhood. The world of images depicting children operates within a dialectic of expansion and control. As the commercial imperative of contemporary capitalism works to expand consumption, it has increased marketing and advertising to and for children. In the process, it continuously expands the sexualization of children's images. In response to proliferating erotic images of children, other forces at many social levels attempt to control and contain child sexuality, especially in image culture. The focal point for this conflict has become sexualized *images* of children, including child pornography.

The way in which this conflict around images of children has developed can be seen in some advertising milestones. Selling relatively expensive designer jeans in the early 1980s, Calvin Klein widely used an image of 15-year-old Brooke Shields with the caption, 'nothing comes between me and my Calvins', a double entendre that conveyed brand loyalty and not wearing underwear. Mildly controversial due to its acknowledging teen sensuality, the ad was remarkably successful; and Klein's advertising has continued the trajectory.³ In the late 1980s, an ad for cologne, Obsession for Men, featured model Kate Moss, notably young, shot topless from the waist up, but also with marked cleavage as she held her arm over her breasts. Later, in 1994, a huge controversy erupted over a series of print ads and television commercials for Calvin Klein jeans that seemed to many protesters to be encoded with the signifiers of child pornography. Although quickly withdrawn, the ads nevertheless stimulated a 30 percent increase in the sales of jeans, conforming to the ad world's logic that teens find transgression appealing. A few years later, the fallout from the 1994 controversy seemed to linger when protests erupted over Calvin Klein ads for children's underwear. More recently, Abercrombie for Kids was criticized for selling thong underwear for girls as young as 7 years. The company responded that they were intended for 10-year-olds, an age at which, according to the company, girls are style conscious and want underwear that does not produce a visible panty line.⁴

Although sexuality is always a sensitive social and political issue, over the past 30 years, discourse around sexuality at many social levels has focused more and more on visual representations. And although images often evoke protest and legal/political efforts at restraint, in an unremarked way, verbal descriptions of sex have become more and more common and frank in the mass media. For example, Special Prosecutor Kenneth Starr's report which led to the Clinton impeachment events was published in full in local newspapers and easily available online. It included explicit descriptions of the Clinton-Lewinsky sexual activities, which were also discussed on television

news and on TV and radio talk shows. Almost every literate child in the US at that time was aware of the details of oral sex, cigars as sex toys, ejaculation stains on clothing, and so on. A measure of the current climate: a recent Home Box Office cable network documentary produced for their Family channel, *Middle School Confessions* (dir. Ellen Goosenberg Kent, 2002) interviews 11–14-year-olds; and we hear and see a 12-year-old girl and her female friends, who discuss giving boyfriends manual and oral sex. While this level of frankness is commonly available in verbal form, elsewhere, in response to Calvin Klein ads, a national campaign attacks photos of children innocuously posed in ordinary underwear with critics claiming to be able to read signifiers of a little boy's penis in the image. Increased surveillance produces more suspicious readings. The famous Coppertone suntan lotion image of a little girl having her swim pants pulled down by a playful pup to reveal her tanline and buttocks was used for 50 years within the common understanding of it as 'innocent'. Today the same image carries the connotation of 'smutty'. A frequently shown US broadcast TV commercial in spring/summer 2003 shows (from the rear) a bare behind little boy running through a crowd at an adult party to get help with his diaper pants from his mother. Here the child (about 2 years old) is encoded as totally innocent in his nudity. By gesture and facial expression, the Coppertone girl implies awareness that the bare bottom is embarrassing or improper.

The State Intervenes

Following a landmark Supreme Court decision on child pornography (New York v. Ferber, 1982), Congress passed a major change to US law, the Child Protection Act of 1984, which removed the Miller obscenity standards from child images and raised the age of majority to 18.⁵ It eliminated the previous restriction to commercial trafficking (and thus allowed prosecution for non-commercial transactions), restricted concerns to visual depiction, and substituted the broader term 'lascivious' for the previously used 'lewd'. Under the new law, interpretation of the image was determined by a variety of factors. Not all these elements were necessary, since the clustering was important: the image's focal point was the pubic area; the setting was sexually suggestive; the pose unnatural; the attire inappropriate for the age of the child; the child could be fully clothed, or partially clothed, or nude; the model displays sexual coyness or willingness; and the image is designed to elicit a sexual response. Therefore the legislation shifted attention from the child porn image as a document of an event (realism) to questions of intent (communication) and the viewer's act of reading the image (reception, interpretation).

The theory underlying the Child Protection Act could be called a right-wing post-structuralism. Fears of sex lead to surveillance and control. The Act changes the agenda from catching child molesters and helping victims to surveilling images. As a result, the visual representation of the sexualized child becomes the central point of cultural contention. At the same time, the

culture holds to an extreme denial of child sexuality. This denial is largely structured along the lines of class and education, that is, differentiated by taste, not objective criteria. Thus readers with high cultural capital could look at the kind of child modeling contests made famous by the murder of JonBenét Ramsey as 'white trash' events marked by highly artificial hair styles, makeup, clothing, and performance, but the same readers might be oblivious to the sexual subtexts of female child figure skating contests, gymnastic performance and ballet.⁶

In 1996, Congress passed the Communications Decency Act (CDA), attempting to control what was seen as a menacing availability of pornography for children using the internet. The Act made it a crime to have adult material online where children could find it. The provisions of the law were immediately challenged and were never put into effect because the Supreme Court found it too sweeping and interfering with legally protected free speech. In 1996, Congress also passed the Child Pornography Protection Act (CPPA), which is what I'm focusing on here. After the CDA was rejected, Congress passed the Child Online Protection Act (COPA, 1998), which requires commercial websites to collect a proof of age (typically a credit card number) before allowing access to material deemed 'harmful to minors'. In May 2002, the Supreme Court returned to the lower courts COPA matters involving the issue of community standards in relation to internet pornography.⁷ A further law, the Children's Internet Protection Act (CIPA) requires public libraries to filter internet access to material deemed harmful to minors.⁸ Congressional committees have generated new legislation, endorsed by Bush's Attorney General, John Ashcroft, who entered office with a determined position to attack pornography.⁹ Doubtless this will be an ongoing matter of contention and concern among the three branches of government, as well as among specific organizations and social and political movements.

This area of debate around pornography has traditionally been the domain of free speech advocates, on the one hand, and politically and religiously conservative censorship forces on the other. In the 1980s, feminists joined the debate (on both sides) and the art world and cultural analysts were drawn into the discussion. This type of cultural contention erupted into the 'sex wars' phenomenon and was mixed with 1980s social activism, such as the AIDS movement.¹⁰ More recently the discussion has expanded to include concerns about new technologies, media representations of violence, changing definitions of childhood, concerns about child molestation (and abduction, assault and murder), the globalization of the internet and other communication businesses, and a fuller analysis of visual culture accounting for factual documentation and representation.

In the past, the mere fact of a photograph (or movie or video or other reproductive technology) of a child engaged in sexual activity was evidence of a crime in the eyes of the law. The image was proof (*New York v. Ferber, 1982*).¹¹ However the current state of image art allows *virtual* images of children engaged in sexual acts. That is, those images can be created without the participation of children in sexual activity. In the last six or seven years,



for example, the most familiar or commonly available images of this kind on the internet were still images of young teen pop music star, Britney Spears, both nude and engaged in sexual behavior.¹² Such images are manufactured by combining authorized publicity, modeling and photojournalism images of the star's face with the bodies of other, presumably adult, women. These recombinant images, relatively easily manufactured with Photoshop and other digital image software manipulation programs, can be easily published on the web and circulate quickly and widely.¹³ Another possibility is to use purely computer-generated image (CGI) technology for both still and moving images. The feature length dramatic action film *Final Fantasy: The Spirits Within* (dir. Hironobu Shakaguci and Moto Sakakibaru, 2001) is generally acknowledged as a breakthrough in producing photo-realistic depictions.¹⁴ Doubtless the technology will only improve and become less expensive and more widely available. Thus, in the near term, we can expect totally artificially generated photorealistic CGI images of children in both still and moving image media.

Computer constructed or modified images can produce 'plausible' photorealistic images which do not document what they purport to show. Previous US laws interpreted pornographic drawings as different from photographic images and not actionable as child pornography. For example, Japanese anime and manga-style images of child sexuality are easily found on the internet, as are cartoon images of The Simpsons children engaged in sexual activities. Technically, simple photographic nudity of children is not presently actionable. But, in fact, enforcement and prosecution vary. In most jurisdictions photo labs and processors are required to report to local police any images they receive of nude children or any clothed children posed in sexually suggestive ways – obviously a subjective judgment. Then police and prosecutors make a further judgment call. As a result, some parents who have taken pictures of the kids in the bathtub or such are investigated, interrogated and arrested for child pornography. In the worst cases, the children are taken by government agents (and placed in foster care or juvenile detention) until the matter can be settled.¹⁵ I want to acknowledge that this happens, but also point out that pictures of children, for example, in nudist/naturist publications and websites (often posed among adults) are technically legal.

The history of documentary photography includes images of naked children, such as the famous war image of a naked young Vietnamese girl running toward the camera after a napalm bomb attack. And art photography includes figure studies such as Edward Weston's nude images of his pre-pubescent son, Neil. However, in the past 20 years, some professional photographers have run foul of the law and critics, most famously Sally Mann for pictures of her children, and Robert Mapplethorpe and Jock Sturges for pictures of minors taken with the parents' permission.¹⁶ In 1994, a controversial Supreme Court case, *Knox v. United States*, redefined photographic child pornography. It shifted the basis from using the photo as evidence from a crime scene to judging a photo as a representation.¹⁷ In this scheme, it did not matter if a real child had been harmed, and clothed children could be

interpreted as lasciviously or indecently displayed. Once again, the point is the law increasingly allows for cases to be decided on the basis of sexual image interpretation, while defining 'sexually suggestive' is always a subjective judgment call. You can easily find within contemporary US culture many examples of this kind of overlapping confusion: kids in underwear or swim-suit ads may be censored, while kids dressed in sexy adult garb and dancing suggestively can be found in child modeling contests, child model websites and some children's entertainment, e.g. the Venezuelan TV show broadcast in the US on Spanish language networks, 'El Club de los Tigritos'.

During the mid-90s, an expanded internet, boosted by consumer computer sales, allowed for a more widespread distribution of photos of (ostensibly) Russian and Ukrainian (and for a while Romanian) female children ranging from about 6 years old to post-pubescent teens. These occurred on many 'lolita' sites. Increased policing somewhat reduced these images' availability, but some lolita sites remain active. Generally, the photos mimic 'artistic' posing conventions ranging from discrete to genital display, but not (to my knowledge) sexual activity.¹⁸ Samples of such photos are displayed on the initial pages of websites which feature such material.¹⁹ Presumably, more revealing images are available after a credit-card payment establishes membership. Since 'lolita' has become a popular search term, almost all pay porn sites with images of young women use the term, although if based in the US, the site probably has 18-year-old models. Lolita images had some previous presence on the no-fee adult sections of US web services such as MSN, Yahoo and Lycos, and others which disappeared with the end of the dot.com bubble, but such underage images are now forbidden by the web hosts.²⁰

Virtual and Performed Images of the Sexual Child: The Supreme Court Decides

The decision the Supreme Court faced in *Ashcroft v. Free Speech Coalition* was to judge if recombinant photo-realistic images and CGIs are granted 'free speech' protections or if they fall into another category. Similarly, photo images of models who *appear* to be underage were considered by the Court. Such images range from the implausible to the borderline: e.g. a well-known adult performer dressed up in juvenile-signifying clothing, with a lollipop, teddy bear, hair in pigtails, etc., at one extreme to slim, petite, small-breasted youthful-looking females and boyish male models. At present, such images appear widely in print and on the internet within an editorial framework that states that the young women (in particular) have just turned 18. For example, the *Hustler* franchise run by Larry Flynt has a successful video/DVD and magazine series 'Barely Legal' in which the captions, text copy and voice narration indicate explicitly that the actors have just turned 18. A gonzo video competitor even has the model display her driver's license in a close-up to verify her legal age before the action begins.²¹ In the 1970s, US hardcore theatrical porn films often presented dramatic fictional stories of

minors engaged in sex with each other and with adults.²² Particularly in the Reagan era, such images were targeted for prosecution, so they were withdrawn. They have reappeared erratically in the 1990s: for example, Max Hardcore's short-lived *Cherry Poppers* series with adults performing both pre-teen and teen roles.

On April 16 2002, the Supreme Court gave its verdict in *Ashcroft v. Free Speech Coalition*, challenging a provision of the 1996 Child Pornography Prevention Act. By a split decision, the majority affirmed that visual child pornography remains centrally defined by the fact that it is the recording of a crime and that its production creates victims. With virtual images, the 6–3 majority reasoned, these two elements are not present. In another aspect, the court decided 7–2 that the government could not criminalize presenting adults as children, which the CPPA had included. For the CPPA, 'appears to be' was actionable, as was any advertising or merchandizing that promised underage sexual depictions, even if these were not in the image. In her opinion, Justice O'Connor found that 'appears to be' in the CPPA covered two categories of speech: pornographic images of adults that look like children ('youthful-adult pornography') and pornographic images of children created wholly on a computer without using any actual children ('virtual-child pornography'). She found the ban on the former too broad and therefore unacceptable, but she did not agree that the ban on virtual child pornography was unacceptable. The conservative minority found the CPPA reasonable and constitutional.²³

Part of the problem here is legal definitions of 'child' are neither simple nor consistent law. In the US, the age of consent for legal sexual activities ranges from 14 (Iowa, Missouri) to 18; the age for operating a motor vehicle is 16, the age for voting is 18 and the age for drinking alcohol is 21. For pornographic images, the model must be 18 for the image to be legal. In a famous case from the 1980s, it was found that Traci Lords had made about 200 pornographic films between ages 15 and 18, even operating her own production company. When it was discovered she was underage, all of those images, films and videos became child pornography, and possession of them illegal.²⁴

Some analysts want to distinguish pre-adolescent children from adolescent children in setting up the terms of this discussion. (I have heard such distinctions recently in news reports and commentary regarding the current US scandal of Roman Catholic priests found to be pedophiles.) But defining borders, particularly in visual terms, is a very tricky business. Because human beings go through stages of development – both physical and emotional – and because there is no perfect correlation of visual markers to chronological age, the norms to distinguish pre-pubescent, pubescent, adolescent and adult by secondary sexual characteristics are problematic. For example, any appeal to physical development is confounded by considerable variation in breast or penis size. The appearance and amount of pubic hair varies with individuals, and it cannot visually be relied on since it can be shaved, and so forth.²⁵ Further, the average onset of puberty in the US has tended to be

earlier than in the past: currently, the norm for African-American females is 9 years, and for white females 11 years. Obviously the basis for any law distinguishing pre-adolescent and adolescent rests on an expectation and determination of emotional as well as physical maturity, ability to make decisions with informed consent, and status as a dependent minor.

The Research Problem

Defining child pornography is a first step for further analysis. But any definition is difficult because of different and competing discourses that contain ideologies about childhood, sexuality and the nature of visual documentation and representation. Obviously, the 'old' legal definition of child pornography (US v. Ferber, 1982), that it documented a crime of sexual assault, was rather simple; it pointed first to the felony of sex with a minor. In that sense, the primary crime was the sexual activity and the visual record was secondary in importance. However, possession and circulation of the visual recording was also a criminal issue. But many explicitly sexual images exist without factual information about the people depicted. For example, what constitutes the visual depiction of a *child*, since the photographic record itself is often quite unreliable in terms of definitively revealing age and thus legal status. Is simple nudity criminal? Is sexual suggestiveness criminal and, if so, what constitutes suggestiveness?

It is difficult to examine these questions analytically because they exist within a complex set of overlapping and contradictory discourses including the legal/juridical, the cultural, the political, the aesthetic and the communicative. In the current situation of digital imagery and global internet circulation of images, quantitative changes have produced a qualitatively different situation and it can be fairly agreed on by all concerned that we've arrived at a new stage.²⁶ Technological change now does put into the hands of anyone who can afford it, and has access to children, the ability to take and circulate images of children engaged in sexual activity. Today, 40+ years beyond the Polaroid camera, 20+ years into consumer video camcorders and 6 years into consumer format digital still cameras, the idea of hardcore pedophiles taking their rolls of film to the one-hour photo processor in their neighborhood seems truly bizarre. But, regrettably, as we've seen repeatedly in an era and aura of moral panic, innocent parents taking pictures of their children can be falsely accused.

As a political matter, we've seen a drastic expansion in the surveillance and policing of children and images of children. Thus the concern for 'protection' of the 'innocent' has the unintended consequence of focusing much more attention on children and representations of them, and in particular of looking for traces of sexual behavior or intentions. Ironically, at the same time that legal and social surveillance of children's sexuality has increased, as a research question, understanding the status of child sexuality has been vastly restricted since the Reagan era. Due to administrative and legislative pressures, it has been virtually impossible to get any funding for clinical or



survey research.²⁷ As with increasing restrictions on sex education, asking a child about sexual activity is forbidden.²⁸ With child pornography, since no one is allowed to have it or study it, the only source of information we have about what it is comes either from police and prosecutors, felon pedophiles, or child participants. There is no 'outside' reference, as is the case in illegal drug use, where medicine produces knowledge outside of the legal system and the culture of users.²⁹ This produces a unique and curious research problem for visual culture analysis. Police and prosecutors sometimes make headline-grabbing claims to having seized large quantities of digital child pornography, but there is no mechanism for outside verification since the press and the public are not allowed to see the materials.

By default, the best critical intellectual analysis of children and sexual images develops within cultural studies, broadly construed. James R. Kincaid's *Child-Loving: The Erotic Child and Victorian Culture* (1992) provides essential historical background, and his subsequent *Erotic Innocence: The Culture of Child Molesting* (1998) surveys recent events in the cultural landscape. From a perspective in art history and criticism, Anne Higonnet's *Pictures of Innocence: The History and Crisis of Ideal Childhood* (1998) supplies an extensive analysis of images of children, including controversies around sexualized photos. And, concentrating on child pornography within the framework of critical legal studies, Amy Adler examines the issues from a Foucauldian perspective in her essential article: 'The Perverse Law of Child Pornography' (2001). Yet all these studies are limited due to restricted or non-existent data.

The contrast between two recent books underlines the issues. In a carefully investigated and reasoned study of children and sexual information in the US today, *Harmful to Minors: The Perils of Protecting Children from Sex* (2001),³⁰ Judith Levine argues that by and large concerns about 'child pornography' are a smokescreen for a repressive agenda fueled by the Christian fundamentalist right and enacted for political reasons to keep children ignorant of sexuality and their choices about it. She begins her book with a discussion of official censorship and then continues with a discussion of the contemporary moral panic over abduction, pedophilia and child incest. Levine finds that, despite media sensationalism and panic peddling, the most reliable reports indicate that for the past 30 years, there has been very little child pornography available.

Aficionados and vice cops concede that practically all the sexually explicit images of children circulating cybernetically are the same stack of yellowing pages found at the back of those X-rated shops [in 1970s raids on Times Square], only digitized. These pictures tend to be twenty to fifty years old, made overseas, badly reproduced, and for the most part pretty chaste. That may be why federal agents almost never show journalists the contraband. (p. 36)

Allowed to see downloaded files by the US Customs Service, Levine found 3 of 50 mildly pornographic. She cites experts who claim that most online

pornography sites are actually police-run traps. She argues that federal and local police officials have used vastly expanded definitions of pornography and techniques of entrapment to justify their expensive policing of internet porn. Making a similar point in *Bound and Gagged* (1996), Laura Kipnis provides a detailed case study of such police entrapment online which seemed to result in a conviction only on the basis of fantasy which was fed and fueled by police enticement.

In contrast, Philip Jenkins's book, *Beyond Tolerance: Child Pornography on the Internet* (2001a), indicates a considerably larger and more substantial pornographic activity. Jenkins began this work after writing *Moral Panic: Changing Concepts of the Child Molester in Modern America* (1998), a historical and social constructionist analysis of child sex abuse. He turned to the internet with a particular emphasis not on commercial or amateur websites, but on bulletin boards with restrictions on admission or private areas for exchange of text and image material. There he found an extensive circulation of image material. His research was done by investigating with his computer browser disabled so he could not actually see the image material, and thus it is based on the written discourse on the sites, not the pictures.³¹ In his book, Jenkins carefully outlines the legal circumstances for his investigation. Subsequently (Jenkins, 2001a, 2002, 2003), he has written on the methodological and epistemological research problems restricting scholarly analysis, and effective policing of child abuse.

There is a gray area here in terms of public and social discussion of the issues of both child sexuality and child pornography, which are very separate issues. Society provides overwhelming support for the proposition that photo/video images of pre-pubescent children engaged in sexual activities with adults are clearly the documentation of criminal sexual assault on a child and the crime is in the assault itself; the image is an ancillary artifact and should be censored. Yet the agenda of most anti-porn activism is much larger, as made clear by efforts to shift the line on 'appears to be' or 'youthful-adult'. Obviously, fantasy is a tricky thing to regulate unless one takes a rigid stand against any kind of imaginative dissembling. For example, some adults want to engage in role-playing activities with other adults, but does an adult-child role-playing site cross the line? That is, does the very pretense of 'Daddy/Daughter' sexual play among adults stand for something so dangerous that speech about it must be forbidden? The Supreme Court decision in *Ashcroft v. Free Speech Coalition* would seem to allow image material. Yet, as Laura Kipnis discusses in a case study of police entrapment, the verbal imagining of illegal sexual activity can result in prosecution and guilty conviction. Similarly, Jenkins (2001b) provides information on a case where a man placed on probation for having pornographic images of children subsequently was found to have self-authored fictional narrations of child sexual abuse (not image material) which upon discovery landed him in jail.

Recombinant child porn, by placing a photo of a real child's face on the body of an adult, although producing a fiction, still maintains a degree of connection to an original child. Although there is no physical abuse documented, the

resulting image references a minor person who might be emotionally affected and who is socially deprived of privacy and dignity. The issue will be decisively changed when someone produces purely computer-generated images of children which are plausible and realistic enough to be indistinguishable from photo/videographic documentation. We may see the disclaimer 'no children were used or harmed in the making of this photo/film'. But this technological change forces the ethical and legal questions. What is the status of such an image, and what is the problem with it, if there is one? Are certain images so potent that they must be prohibited? Is the prohibition on images finally on images for their indexical nature or for their symbolic nature? The common disavowal of sexual material – this is just an image, fiction, figurative, make believe, a lie – runs into the concept that it is convincing, realistic, plausible, connected to the real. It allows a route to fantasy. Is it that fantasy that must be prohibited?

Celebrity Cases

Much of the public awareness of child pornography circulates through the press's attention to high-profile child abduction and murder cases when it is revealed that the culprit possessed illegal images. But beyond direct criminal cases, celebrity cases also gain considerable attention. In the early 1990s, popular rising star Rob Lowe had his career derailed for a while when videotapes of him engaged in sex with a 14-year-old girl appeared and were widely pirated, though he was never charged; he ended up in the late 1990s a major actor on the prime time TV series *The West Wing*. In a similar case, popular African-American singer R. Kelly, known both for his gospel roots and his sexually provocative hits, was charged with 21 counts of child pornography in Chicago in June 2002 when pirate copies of a videotape of Kelly having sex with a minor circulated widely in the city's black neighborhoods.

Several high-profile celebrity cases at the time of writing (May 2003) dramatize the issues. Rock musician Pete Townsend (of The Who) was issued with a formal warning by Scotland Yard for viewing child pornography on the internet, and his name will appear on Britain's sex-offender register (Schwartz, 2003). Actor Paul Reubens (Pee Wee Herman) faces prosecution on possession of child pornography for images he collected from 1950s and 60s male physique magazines. Richard Goldstein (2003) explains in the *Village Voice*:

During the '50s and '60's, no one was concerned that some models were underage, since they were not shown having sex or even engaging in what tea-room graffiti of that era called 'showing hard.' Today these same images would qualify as child porn under a standard that has expanded so that it now includes not just hardcore images but photos of anyone under 18 displaying 'sexual coyness' or a 'lascivious' intent. (15–21 Jan)

Goldstein concludes:

... the fixation on erotic images as opposed to criminal behavior may have unintended consequences ... An image that once seemed tender, since its sexual meaning was repressed, is now terrifying because it reads as explicitly erotic. The process of sensitizing us to child porn also forces us to eroticize children. Whether we intend to or not, we begin to see the world from a pedophile's perspective.

Policing Child Pornography

Amy Adler (2001) argues convincingly that the law on child pornography produces a heightened regard for the sexualized child:

... the burgeoning law of child pornography may invite its own violation through a dialectic of taboo and transgression ... The law may unwittingly perpetuate and escalate the sexual representation of children that it seeks to constrain. In this view, the legal tool that we designed to liberate children from sexual abuse threatens us all, by constructing a world in which we are enthralled – anguished, enticed, bombarded – by the spectacle of the sexual child. (p. 209)

But it also directs attention and resources to visual culture rather than criminal assault.

The efficacy of intervening for child victims by pursuing images needs to be examined critically. Several vigilante websites which ostensibly act to find internet child pornography and alert police are functionally gateway resources for pedophilic information. One such site reproduces partial images (*waist up*) it claims are examples of porn images (reproducing the face of the boy victim) and a digitally obscured image of an adult/child sex act.³²

The police questionably use extensive and expensive police resources to pursue child pornography rather than child abusers. For example, a Texas couple were arrested, prosecuted, and jailed for operating what police described as a vast internet child pornography operation. The couple offered a credit card verification service for 250,000 customers that allowed entry to about 5000 porn sites. Two of those 5000 were found to carry child pornography.³³ The FBI then took over the site and ran it for two years offering the quarter-million subscribers child porn videos, CD-ROMS and magazines. From the small number who responded, 100 arrests were made. The press version claimed the FBI broke up a child porn ring of 250,000. The names of foreign respondents were turned over to their national police which resulted in additional arrests. Another famous case, 'Operation Candyman', prominently announced to the press by Ashcroft and the FBI a month before the *Ashcroft v. Free Speech Coalition* decision, targeted members of an online bulletin board group ('FBI news release on Operation Candyman',

2002). However, later reports questioned the process and effectiveness of the operation, and some initial search warrants were found to use 'reckless disregard' for the truth, resulting in evidence being dismissed (Silberman, 2002; Brewer, 2003).

The emphasis on images can make good publicity for the police and result in high-profile convictions. But if these are based on people who are only circulating images and not the original producers, the arrests do not intervene to stop the instigating abuse. Nor do these kinds of prosecutions affect child sexual abuse. That real abuse is most often not recorded and circulated in image media, but is marked on the body and mind of the child victims. In terms of priorities, if the police, prosecutors, judges and legislators concentrate on images, that still leaves abused children defenseless.

For police (and granting them power, legislators, administrators and the judiciary), the temptation to attack the displaced form of pornography, to move from the real to the image, is understandable. Society faces the dilemma that child sexual abuse most often takes place within the family or extended family, and that it is hidden by the family, by an interlocking set of issues of privacy, protection of the family, and patriarchal privilege. It is easier to find images than determine actual abuse. Cultural Studies tends to mirror this logic: operating largely through the examination of representations (and arguing – correctly – that they are part of the actual world), analysis can end up unable or unwilling to connect the study of images and symbolic representations to the lived lives of people. Or it displaces that lived connection to an awareness of some needed 'final analysis' that never takes place.³⁴

Notes

1. First given as a paper at the Society for Cinema Studies conference, Denver, May 2002. A somewhat different version of this essay appears in Church Gibson (2004).
2. Available at the Library of Congress website [www.loc.gov]. A useful summary of recent law on internet pornography and children: Krause (2002). An extensive background survey which I draw on throughout this article: Klein et al. (2001) [<http://www.missingkids.org>]; see 'Home' (2003).
3. The key ads are reproduced on several websites: Breder (1997); Breder and Tonella (1997) 'Calvin Klein'; 'Calvin Klein: Case Study Assignment', *Media Awareness Network* (no date); 'Brandon': *The Commercial Closet* (no date); Smith (no date) 'Calvin Klein'; 'Unofficial Calvin Klein Ads Archive' (no date).
4. Abercombie for Kids was earlier criticized for using male and female nude teen models in one edition of their clothing catalogue. The objection to thongs was directly aimed at the merchandise available in mall stores and by catalogue, not ads, since the only images were of the product itself (Ortiz, 2002).
5. The landmark 1972 Supreme Court ruling in *Miller v. California* established the principle of communities setting their own standards for obscenity. Thus San Francisco could have very liberal standards while small towns in the deep South could be extremely conservative.
6. The Ramseys were an upper-class family, economically; the mother participated in beauty queen contests while a young woman in the South and passed on the contest culture to her daughter at an early age.
7. While the Miller local standards plan was functional in an era when distribution

- issues focused on the local bookstore and movie theater, changing technologies of distribution and exhibition, such as videotape/DVD/cable/satellite and the internet, changed local availability. As a result, regulators have turned increasingly to age as the key national barrier to child access.
8. The law was appealed to the US Supreme Court which ruled to allow filtering, but it also stipulated that adult patrons should be able to request that the filter be turned off. Librarians point out that filtering software is fairly crude and thus denies access to legitimate non-sexual material.
 9. As a senator, Ashcroft was a leader in promoting religious conservative positions, and his appointment was seen as the major recognition of Christian fundamentalist politics in Bush's cabinet appointments. The September 11 2001 attacks drastically changed priorities, and the Attorney General's office has not prioritized pornography issues. Ashcroft signaled his understanding of art when he had curtains placed over an art deco statue, *The Spirit of Justice*, with an exposed breast in the lobby of the Justice Department ('Curtains for semi-nude justice statue', BBC News, 2002).
 10. A thorough account from the feminist anti-censorship position: Duggan and Hunter (1995). A recent anthology recapitulates and updates the feminist anti-pornography position (while being grossly misleading in its claim to be fair and balanced): Cornell (2000).
 11. Ferber was the first decision that specifically addressed child pornography as a special category. Previously the matter was handled under general obscenity law. In 1984, Congress enacted legislation to deny any free speech protection for images of children and raised the age of adulthood from 16 to 18 years.
 12. Spears turned 18 on 2 December 1999, at which time she had a well-established career and image (with schoolgirl-styled clothing), including a frequently noted and commented on breast enlargement. Many of the initial fake images concentrated on showing her topless.
 13. Additional issues are the legal implications of privacy and publicity for celebrities and image ownership. For a full discussion, see Gaines (1991). I discuss a pirate videotape distributed on the internet (Kleinhans, 2001).
 14. Based on a popular videogame, the sci-fi adventure features characters who generally maintain a military bearing, thus making CGI limits on body language and facial expression less of a concern.
 15. In these circumstances, some parents have felt coerced into a 'confession' of some wrongdoing (against their actual behavior) because their children were held hostage by the legal system (see Levine, 2002).
 16. These cases and others are well analyzed in Higonnet (1998).
 17. Detailed in Higonnet (1998: 182-5).
 18. Grove and Zerenga (2002). (Given the nature of the internet, these sites may not actually be located on computer servers in Russia and the Ukraine.)
 19. These commercial sites seem particularly volatile, though it is unclear whether this is because of business changes or legal matters. At the time of writing, the site ukrainian-angels.com contained such images, although it had changed its name to 'gentle angels' on the first page.
 20. Some anti-child porn organizations describe conducting their own investigations and alerting web administrators and police agencies of violations. However, since computers download images from remote servers, to actually view such material the vigilante viewers break the law against possession. Even when subsequently removed to the 'trash', the file remains until overwritten because technically only the directions to the file are erased and thus can be revealed by high-tech forensic investigation. At present, alerting police to illegal images on

the internet is not a legal defense; a reporter who did so was arrested for possession of the images he found during an investigation (Calvert and Lyon, 2000). Various porn sites frequently offer software that promises to erase all traces, as well as encryption programs that allow more security for files.

21. *Bring 'um Young* (dir. Jon Dough) series c. 2001.
22. For example, *Debbie Does Dallas*, *Oriental Babysitter*, *Little Girls Blue (I and II)*, *First Time at Cherry High* (later re-titled and re-released as *First Time at Cherry U*).
23. O'Connor apparently meant to address CGI but did not address recombinant pornography using real children (but taken from non-pornographic behavior) combined with images of adult genital activity.
24. However, some of her film work from that period is available in France and the Netherlands, which use a different age of majority for sexual images, and still images occasionally appear on the internet.
25. In pediatrics, the standard scale for determining maturation is the Tanner staging scale which relies on breast development in girls, genital development in boys, and pubic hair growth in both. Tanner and a colleague have gone on record as stating that the scale is not reliable for determining a child's age from image materials in court proceedings (Rosenbloom and Tanner, 1998).
26. As has been widely noted, the internet creates a global community. The 1972 Miller decision allowed that different places could regulate pornography in different ways. Functionally this meant that local prosecutors made decisions about what was acceptable and not, and police then followed these guidelines. As businesses adapted to the local conditions, different locales might allow different materials to be sold. For example, in the early 1980s, postal inspectors used Tennessee, with very strict laws and interpretations, to take action against national mail-order pornography. The businesses shifted to United Parcel Service and similar delivery services to avoid the problem. But the internet negates this standard, since it is available nationally and internationally. In a case decided in May 2002, the Supreme Court returned to the appeals court, a case dealing with this issue. The justices were quite diverse in their reasoning, with the most conservative members indicating that they would make the most conservative locality the national norm, and the more liberal members finding this unreasonable. So the issue will doubtless return at a future time.
27. In sharp contrast, studies of children and violence, especially effects of representations of violence in the media on children, are extensively funded and subsequently used in policy formation, national and local legislation, advice to parents and teachers, and so on.
28. Conservative political and religious objections tend to reveal a fear that such research would demonstrate that various sexual activities are 'normal' and therefore would undermine the conservative position, much as conservatives hold the Kinsey studies as a major cause of post-Second World War liberalization in thought and behavior about sexuality.
29. Some argue for an academic exception for research purposes (Calvert, 2002; Calvert and Lyon, 2000). Jenkins (2002) argues for journalist exceptions.
30. Levine is an investigative journalist who argues strongly in the second half of the book for liberal reform of sex education. Levine's book was severely attacked by the extreme right before publication. The University of Minnesota Press has a discussion of the controversy and links to major documents ('Harmful to Minors', 2002). A good complement to Levine is Heins (2001), which has a more historical range in addressing the question from a civil liberties perspective.
31. In this aspect, it is similar to Roland Barthes' analysis (1983) of the structure of the fashion industry, based on an analysis of the captions, not the pictures, in haute couture journalism such as *Vogue*, *Elle*, etc.

32. It is almost impossible to determine the authenticity of such claims, unless one has police powers. Assuming these sites are sincere – and the images authentic – some show no compulsion about reproducing the face of underage victims. This disregard for victims' rights and privacy is so blatant, that one can easily wonder if it is simply a cleverly disguised pedophile site which uses 'exposing pedophiles' as a ruse ('Better A Millstone', 2002).
33. In court, the couple claimed ignorance of the contents of the 5000 various sites, and said that they were simply providing a clearance service. These claims were not accepted as defenses. However, section 230 of the Communications Decency Act, which was not challenged (although the act was found unconstitutional on other grounds by the Supreme Court), provided that interactive computer services could not be considered publishers and held liable for content (Cavazos, 2001). Using the CDA rule, in a Florida Supreme Court decision on an America Online case, internet service providers are not held liable for civil damages for pornographic content they may carry on bulletin boards (Miller, 2001; 'Mother of Child Porn Victim Asks High Court to Review ISP Immunity', 2001).
34. The particular constraints on child pornographic images present a peculiar situation for visual culture analysis. The image material to be analyzed is not legally available for study, and a scholarly article on the subject cannot be illustrated with examples, even in a *journal of visual culture*. The traditional tasks of intellectuals, journalists, academics and policy makers to investigate independently are foreclosed. How can you analyze something you cannot see?

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